

Applicants also note that the Examiner has provided a final rejection despite the fact that Applicants did not substantively amend the claims. However, the Examiner has raised new art and new rejections in this office action. It is Applicants' understanding that it does not comport with PTO policy and procedure to provide a final rejection in such circumstances. Applicants will now proceed to address the merits of the Examiner's rejection, but note and preserve this objection in the event of appeal.

The Examiner has rejected claims 1-19 under 35 USC 103 as being unpatentable over Sauer et al. (hereinafter, "Sauer") in view of Olafsson. This rejection by the Examiner of these claims is respectfully traversed.

The Examiner disagrees with Applicants in several respects. Applicants will respond to the different points made by the Examiner in turn below.

First, the Examiner supports his rejection on the argument that "any person skilled in the art knows that when reception is lost, synchronization is lost, too." However, the Examiner has failed to provide any prior art establishing that this is well-known by one of ordinary skill in the art. Therefore, this assertion by the Examiner is traversed. Furthermore, the Examiner must interpret the line he points to from Sauer to reach the conclusion he does, which, of course, is simply hindsight reconstruction, a practice that has been frequently condemned by the Federal Circuit. Nonetheless, even assuming, strictly for the sake of argument, that the Examiner's point were correct and Sauer could be interpreted in the manner asserted, the Examiner's rejection would still be insufficient. Sauer fails to distinguish between loss of reception and loss of synchronization. The Examiner's statements treat them as if they are one and the same and they are not. Since Sauer itself fails to discuss either, it is clearly insufficient, as indicated above. Thus, in summary, the Examiner's overall point that Sauer teaches when resynchronization is required is not correct.

Second, the Examiner takes the position that Sauer and Olafsson are from the same field of endeavor. This point is also traversed. Part of the Examiner's basis for this conclusion is his position that Sauer teaches when resynchronization is required. Because this point has been shown above to

be incorrect, likewise the conclusion that is based on it, namely that the two patents are from the same field of endeavor, must be incorrect. However, in addition, the two patents deal with different types of synchronization and, therefore, cannot be from the same field of endeavor.

Third, the Examiner takes the position regarding Olafsson that it would be obvious to replace symbols with characters or bits. Again, this point is traversed. It is clear, as the Examiner implicitly acknowledges, that symbols are not considered the same as characters or bits by one of ordinary skill in the art, in communications, for example; the dictionary definition pointed to by the Examiner notwithstanding. However, the Examiner's argument also misses the point. Olafsson is specifically directed to symbol synchronization. This is not the type of synchronization addressed by the above-referenced patent application. Furthermore, even assuming, strictly for the sake of argument, that one of ordinary skill would make the leap suggested by the Examiner, since symbol synchronization is a different problem, the combination would fail to produce the claimed subject matter and the combination would not be proper.

The Examiner specifically discusses claims 7 and 9 and 17-19 in his response. Although the prior discussion is believed sufficient to overcome the Examiner's rejection, his additional comments should also be addressed. The Examiner states "time windows for receiving a certain number of characters or detection schemes similar to ones recited in claims 7 and 9 are well-known or a matter of common knowledge in the art." This statement is traversed. Specifically, as was indicated in Applicants' previous response, all such statements or attempts by the Examiner to state what is "common" or "common knowledge" or "well known in the art" or to take other sorts of official notice are traversed. The Examiner is required to provide prior art that demonstrates his assertion. He has failed to do so with respect to the statement regarding claims 7 and 9, for example. Regarding claims 17-19, he states: "[T]he recited compatibility or lack of compatibility with various standards and specifications as part of systems design criteria and choices is common in many networks." Again, this is traversed. The Examiner is required to indicate which features he is referring to and provide prior art that demonstrates the feature is common, as he suggests. This he has failed to do.

Therefore, for at least the reasons discussed above, it is requested that the Examiner withdraw this rejection of these claims.

The Examiner also rejected claims 2, 3, 11, 12, and 15 under 35 USC 103 as being unpatentable over Sauer and Olafsson and further in view of Jordan et al. (hereinafter, "Jordan"). This rejection of these claims is traversed.

As previously indicated above, this is a new rejection based on new art, despite the fact that Applicants did not amend the claims. Applicants assume that this new art is cited at least in part to address Applicants' traversal of the Examiner's official notice. However, the Examiner makes several assertions that Applicants feel should be addressed.

The Examiner, on page 3, in response to the traversal of official notice, states: "[I]f a processor can recognize a set of characters as synchronizing characters, it would be obvious to one ordinary [sic] skill in the art to reprogram it to recognize a different set of characters." Without taking a position on the Examiner's statement, since no prior art is provided to support it, Applicants simply make the point that since this is not what Applicants' claims recite, it is irrelevant in any event.

The Examiner also treats the following statement from the specification as an admission: "In this particular embodiment, the aforementioned idle character is the "idle 1" character, as defined in the aforementioned specification, although any character may be employed, whether defined by the aforementioned specification or not." Specifically, the Examiner states: "[A]pplicants themselves admit that any character may be used in order to gain resynchronization which would have been the conclusion reached by any person of ordinary skill in the art." Later, the Examiner also states: "[A]pplicants themselves admit that any characters may be employed. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to choose any character set as synchronization characters...". These statements by the Examiner are specifically traversed. Statements made in a patent application regarding possible embodiments of claimed subject matter is not an admission that specific or possible features of the embodiments described would be obvious to one of ordinary skill. To the contrary, these statement are provided to make more clear the scope of

the claimed subject matter. If such features were obvious or well-known, it would be unnecessary or superfluous to make explicit statements regarding such features in the specification.

As indicated above, regarding claims 2, 3, 11, 12, and 15, the Examiner has added Jordan to the combination of Sauer and Olaffsson. It is respectfully asserted that Jordan fails to cure the deficiencies noted above regarding Sauer and Olaffsson with respect to claims 1, 10, and 16. For example, Jordan deals with synchronization of a telegraph line and synchronization of each end must be performed separately. Therefore, it is not relevant at all to the problem addressed by the above-referenced patent application. The proposed combination, therefore, is not proper. Furthermore, even if the combination were proper, which Applicants assert it is not, the combination would still fail to produce the claimed subject matter or render it obvious. For example, resynchronization cannot occur from both ends Jordan for the reason just explained – synchronization of the ends is performed.

Therefore, for at least the reasons discussed above, it is requested that the Examiner withdraw this rejection of these claims.

The Examiner also rejected claim 4 under 35 USC 103 as being unpatentable over Sauer and Olafsson and further in view of Nakayama. This rejection of this claim is traversed.

Here, the Examiner has added Nakayama to the combination of Sauer and Olaffsson. It is respectfully asserted that it also fails to cure the deficiencies noted above regarding Sauer and Olaffsson with respect to claim 4. For example, it deals with frame synchronization. Again, this is a different type of synchronization than either Sauer or Olaffson and, therefore, the combination is not proper. Further, it is not relevant at all to the problem addressed by the above-referenced patent application. Even if the combination were proper, which Applicants assert is not, the combination would still fail to produce the claimed subject matter or render it obvious. For example, in Nakayama, loss of synchronization is not signaled across a network to the other end.

Therefore, for at least the reasons discussed above, it is requested that the Examiner withdraw this rejection of this claim.

CONCLUSION

In view of the foregoing, it is respectfully asserted that all of the claims pending in this patent application are in condition for allowance. If the Examiner has any questions, he is invited to contact the undersigned at (503) 264-0967. Reconsideration of this patent application and early allowance of all the claims is respectfully requested.

Respectfully submitted,



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Date of Deposit

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